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1
2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF DELAWARE

4 C.A. No. 04-1300-SLR

5
6 ETHYPHARM S.A. FRANCE)

7 and ETHYPHARM S.A. SPAIN)

8 Plaintiffs)

9 vs.)

10 BENTLEY PHARMACEUTICALS,)

11 INC.,)

12 Defendant)

13
14 VOLUME 2

15 Videotaped Deposition of Adolfo de Basilio

16 Washington, D.C.

17 August 3, 2006

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19
20 Reported by: Bonnie L. Russo

21 JOB NO. 175559

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5
6 August 3, 2006
7 9:00 a.m.
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9
10 Videotaped Deposition of Adolfo de Basilio held
11 at:
12
13 Baach Robinson & Lewis
14 1201 F Street, N.W.
15 Suite 500
16 Washington, D.C.
17
18
19
20 Pursuant to notice, before Bonnie L. Russo,
21 Notary Public

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20
21

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 17 55 Response to letter dated 9-3-97 171
 18 56 Royal Hotel Confirmation 173
 19 57 Supply Contract 175
 20
 21 (Exhibits retained by counsel.)

1 have said.
 2 BY MR. STEWART:
 3 Q. All right. Would you please look at
 4 Exhibit 1. I only have a couple of more
 5 questions with this document and then we will
 6 be done.
 7 I may have asked you this question
 8 yesterday and if so, I apologize. Did you
 9 prepare an original draft of Exhibit 1? Did
 10 you make an original one?
 11 A. No. I said I didn't remember
 12 exactly, but I am convinced that it was not me
 13 that prepared the document.
 14 Q. Was it someone from Ethypharm that
 15 prepared the document if not you?
 16 MR. BOSTWICK: Let me object --
 17 object as asked and answered. He said he
 18 doesn't recall.
 19 BY MR. STEWART:
 20 Q. Please continue to answer.
 21 A. No. Ethypharm didn't prepare it.

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1 THE VIDEOGRAPHER: On the record
 2 with Tape Number 1 of Volume 2 of the testimony
 3 of Adolfo de Basilio in the matter of Ethypharm
 4 versus Bentley.
 5 Our court reporter today is Bonnie
 6 Russo representing Esquire Deposition Services.
 7 My name is T.J. O'Toole also representing
 8 Esquire.
 9 The date is August 3, 2006. The
 10 time is 8:41:19.
 11 EXAMINATION BY COUNSEL FOR DEFENDANT (Cont'd)
 12 BY MR. STEWART:
 13 Q. Good morning, Mr. de Basilio.
 14 A. Good morning.
 15 Q. Is there anything that you wish to
 16 add or change to your testimony from yesterday?
 17 MR. BOSTWICK: Objection to form.
 18 THE WITNESS: Not really. There are
 19 some things that I have been remembering from
 20 the questions you made yesterday, but there is
 21 nothing that would substantially change what I

1 Q. If you would look at paragraph G on
 2 page 2 of Exhibit 1. The period of the
 3 agreement is stated that it would be -- that it
 4 will be for two years. Do you see that?
 5 A. Yes.
 6 Q. Did you originally wish that the
 7 agreement be for one year?
 8 A. I cannot remember.
 9 MR. STEWART: Let me have marked as
 10 the next exhibit a fax from Mr. de Basilio
 11 dated February 24, 2000.
 12 (Deposition Exhibit No. 11 was
 13 marked for identification.)
 14 MR. BOSTWICK: Craig, before you go
 15 on, do you want to mention for the
 16 record the Exhibit 7 change?
 17 MR. STEWART: Mr. Bostwick has
 18 reminded me that by agreement we have
 19 substituted a Bates numbered copy of Exhibit 7
 20 for the one that was marked yesterday. In all
 21 other respects, the document is identical to

3 (Pages 157 to 160)

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1 the one that was marked yesterday.
 2 Is that correct?
 3 MR. BOSTWICK: That's correct. And
 4 for the record, the Bates number begins at
 5 Bentley 8353. It's just the purpose of our
 6 substituting the exhibit as just to clarify
 7 that it was, in fact, produced.
 8 BY MR. STEWART:
 9 Q. Mr. de Basilio, is that your
 10 signature on Exhibit 11?
 11 A. Yes.
 12 Q. And I'm going to read my translation
 13 of what is written above your name.
 14 "Attached herewith are the contracts
 15 to be signed with Belmac as well as the
 16 documents that have already been signed to date
 17 and which seem important to us."
 18 Have I read that correctly?
 19 A. Yes.
 20 Q. Can you tell us, please, what are
 21 the contracts that were included with this fax?

1 BY MR. STEWART:
 2 Q. What documents do you believe would
 3 have been included within those 39 pages?
 4 MR. BOSTWICK: I'm going to object
 5 as it calls for speculation.
 6 THE WITNESS: Yesterday I stated
 7 that we were discussing the outsourcing
 8 contracts during months, and evidently I think
 9 that in this document was accompanied by those
 10 documents.
 11 BY MR. STEWART:
 12 Q. And are the documents that you are
 13 referring to the documents that we have marked
 14 as Exhibits 1 through 6?
 15 A. No. They would have been all the
 16 documents like from 3 to 6.
 17 Q. From 3 to 6, but not 1?
 18 A. I believe that that document was
 19 signed on the 23rd of -- so this document is
 20 signed in February so the other was produced in
 21 March, so obviously it was not present.

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1 A. Why are they not included here?
 2 Q. Because your counsel did not provide
 3 them.
 4 MR. BOSTWICK: I object to that.
 5 I'm sure we have provided all the documents
 6 that were available. It could very well be
 7 that they were provided in the Bates stamps
 8 right after it. You just haven't showed it to
 9 him.
 10 MR. STEWART: Well, if I had them, I
 11 would. I wasn't insinuating there was any
 12 inferius intent. We don't seem to have them,
 13 so I want to ask this witness whether he might
 14 remember what the documents were that were
 15 attached to this fax dated February 24, 2000.
 16 THE WITNESS: My question as to why
 17 they are not here is that it is marked that
 18 there are 39 pages. So I know what the
 19 documents are, but they may have been others
 20 that I don't know that could be important but
 21 that I cannot remember.

1 Q. So --
 2 A. These documents were signed in
 3 February and the other was signed in March, so
 4 obviously it is not included here.
 5 Q. Which documents are not included?
 6 A. Exhibits 1 and 2.
 7 MR. STEWART: If we could have
 8 marked, please, as the next exhibit a statement
 9 with what appears to be Mr. de Basilio's
 10 signature dated March 4, 1998.
 11 (Deposition Exhibit No. 12 was
 12 marked for identification.)
 13 BY MR. STEWART:
 14 Q. Have you had a chance to review
 15 Exhibit 12, Mr. de Basilio?
 16 A. Just a moment.
 17 Okay.
 18 Q. Okay. First, did you prepare this
 19 statement?
 20 A. I do not remember. It has the
 21 letterhead of Ethypharm, but there is something

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1 here that appears to be missing or erased. And
2 I don't know to whom this letter is directed.

3 Q. Is that your signature on the
4 document?

5 A. Yes.

6 Q. Can you tell us what this document
7 was for?

8 A. This is a document the same as the
9 documents that we saw during the proceedings
10 yesterday.

11 Q. Is this a document that is intended
12 to be used to satisfy clients' demands for the
13 status of the relationship between Belmac and
14 Ethypharm?

15 A. Yes, the same as yesterday for the
16 certificate of free sale -- the free sale
17 certificate and the export.

18 Q. And is there anything in the
19 document that you disagree with?

20 MR. BOSTWICK: Objection to form. I
21 also object on the Phase 1, Phase 2 issue.

1 doesn't mean that they are the owners of the
2 documents or the technology because that
3 belongs to Ethypharm.

4 Q. I understand that that is your
5 position.

6 I want to turn to Ethypharm's
7 relationship with Rimafar and as quickly as we
8 reasonably can talk about Ethypharm's
9 relationship with the U.S. corporation Belmac
10 Corporation.

11 A. Agree.

12 Q. And to help us I am going to mark
13 three documents; first, as Exhibit 13 is a fax
14 dated January 29, 1991, Exhibit 14 a fax dated
15 June 20, 1991, and Exhibit 15 a draft
16 manufacturing contract dated November 29, 1991.

17 (Deposition Exhibit Nos. 13 through
18 15 were marked for identification.)

19 MR. BOSTWICK: I make a request that
20 when Mr. de Basilio is shown more than one
21 exhibit at a time that for clarification sake

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1 We have been doing a lot of that
2 yesterday and I have allowed it, but I have
3 gotten a lot less accommodation on the other
4 side on this subject.

5 THE WITNESS: Can you ask me
6 something specific?

7 BY MR. STEWART:

8 Q. Fair enough.

9 Is the statement -- is the following
10 statement correct? "This formulation of
11 Omeprazole was registered in Spain by Belmac
12 Laboratories (trade name Belmazol) who provide
13 their Spanish free sale certificate"?

14 A. Yes. This is what I explained
15 yesterday about the documentation that you have
16 to provide the Spanish probes agency by Belmac
17 but provided by Ethypharm to Belmac. And
18 through which Belmac becomes the holder of the
19 permit.

20 And the drug agency allows them to
21 commercialize the product in Spain, but this

1 that when you are referring to a specific
2 document, you state the exhibit.

3 And Mr. de Basilio, the same thing.
4 You had a number of documents with you in front
5 of you before and sometimes you refer to
6 documents but don't talk about the exhibit
7 numbers. And I would like you to make sure you
8 do.

9 THE WITNESS: I agree.

10 MR. BOSTWICK: Thank you.

11 BY MR. STEWART:

12 Q. Mr. de Basilio, would you describe
13 for us when Ethypharm contacted, first
14 contacted Rimafar and what communications there
15 were with Rimafar with respect to the
16 establishment of the business relationship?

17 MR. BOSTWICK: Objection. Compound.

18 THE WITNESS: You are asking me a
19 question about 17 years ago. I think that the
20 relationship with Rimafar began around the year
21 1990.

5 (Pages 165 to 168)

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1 BY MR. STEWART:
 2 Q. And have you completed your answer?
 3 A. Is there any other thing you want to
 4 know?
 5 Q. There are other things and I will
 6 ask some questions.
 7 What was the purpose of the
 8 relationship from Ethypharm's standpoint of
 9 going into business with Rimafar?
 10 A. This is something that we have
 11 already talked about yesterday, but we can
 12 place it around that date.
 13 Ethypharm had a product named
 14 Omeprazole that because of the existing patent
 15 in France that they could not develop the
 16 product in that country. And that's why we
 17 reached for the laboratory Rimafar.
 18 Q. And were you dealing with the
 19 general manager of Rimafar at that time?
 20 A. Yes.
 21 Q. And that person was Angel Perez de

1 understand that in English and there is not --
 2 THE WITNESS: Yes. Because it was
 3 written to me by English, I agree we liberate
 4 the translator from his duties only for this
 5 reason.
 6 BY MR. STEWART:
 7 Q. Have I read that first sentence
 8 correctly?
 9 A. Yes.
 10 Q. And the second sentence, "Mr. Perez
 11 de Ayala would like to have these materials in
 12 sight before my meeting with him next February
 13 7, if possible."
 14 Have I read that correctly?
 15 A. Yes.
 16 Q. What are the materials that are
 17 referred to in the first sentence of your
 18 letter?
 19 A. I'm going to tell you in English the
 20 name of the device --
 21 Q. Okay.

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1 Ayala; is that correct?
 2 A. Yes.
 3 Q. And he was --
 4 A. Angel, A-N-G-E-L, P-E-R-E-Z, D-E,
 5 A-Y-A-L-A.
 6 Q. If you look at Exhibit 13,
 7 Exhibit 13 is in English, correct?
 8 A. Yes.
 9 Q. And you wrote that in English,
 10 correct?
 11 A. Yes.
 12 Q. The text of the fax says "Rimafar
 13 has called to note the date of reception of
 14 materials in Zaragosa arriving from France to
 15 organize the trial within their facilities."
 16 MR. STEWART: May I have agreement
 17 that for purposes of simply confirming the text
 18 that we can dispense with the translation?
 19 MR. BOSTWICK: Yes.
 20 So long as you understand,
 21 Mr. de Basilio, you can indicate that you

1 A. -- and all the necessary elements to
 2 produce something like pumps, filters, sieves.
 3 Q. These are -- this is equipment
 4 necessary to produce Omeprazole?
 5 A. Exactly.
 6 MR. STEWART: I believe he said
 7 "coating pans," and because he said it, it
 8 didn't get transcribed.
 9 THE INTERPRETER: Right. He said it
 10 in English.
 11 MR. BOSTWICK: Can we confirm
 12 somehow that he said coating pans, because it
 13 didn't get on the record.
 14 BY MR. STEWART:
 15 Q. Mr. de Basilio, included in the
 16 materials were there also coating pans?
 17 A. Yes.
 18 Q. And then obviously we also have the
 19 arriving the excipients and everything that the
 20 Spanish producer would need.
 21 THE INTERPRETER: No?

6 (Pages 169 to 172)

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1 THE WITNESS: And we receive the
2 excipients and the active principal
3 manufactured by the Spanish producers because
4 you cannot produce Omeprazole in France, the
5 active principal.

6 BY MR. STEWART:

7 Q. Please look at Exhibit 14. And that
8 is a fax that you wrote in English; is that
9 correct?

10 A. Yes. I always communicate in
11 English with my main office.

12 Q. I'm going to read what is written
13 and ask you to confirm my reading. And as
14 agreed, we can give our translator a brief rest
15 while I read this.

16 "Please find a copy of the fax sent
17 by Rimafar saying we can go ahead. This is as
18 a result of my question about preinstallation
19 of capsule filling machines and pans.
20 Mr. Perez de Ayala wants to start as soon as
21 possible. I will inform MG to Spain of this

1 BY MR. STEWART:

2 Q. So was Rimafar advising that they
3 were ready to begin production?

4 A. They were talking about the
5 installation of the capsule filling machines
6 and the coating pans, and that's why I am
7 saying that I am informing them that MG 2 is
8 the manufacturer of the capsule filling
9 machines that is in the Exhibit No. 14.

10 Q. Now, at this time there was no
11 agreement -- there was no written agreement
12 with Rimafar; is that right?

13 A. That is correct.

14 Q. And look at Exhibit 15, please.

15 Is this a draft of an agreement,
16 draft of a manufacturing agreement between
17 Ethypharm Spain and Laboratorios Rimafar?

18 A. It's not a draft. That is the
19 contract.

20 Q. That is the contract?

21 A. But it is a contract that is

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1 confirmation."

2 Have I read that -- those sentences
3 correctly?

4 A. Yes.

5 Q. And when -- what is meant by the
6 phrase "we can go ahead"?

7 A. If you are looking at the fax on the
8 next page from Perez de Ayala, it explains what
9 that mean.

10 Q. Could you read the fact from
11 Mr. de Ayala?

12 A. Should I give it to the interpreter?

13 MR. STEWART: Sure.

14 THE INTERPRETER: "Dear Sirs,
15 according to the phone conversation carried
16 yesterday, we confirm our purpose or intention
17 to install the capsule making machines
18 and -- capsule filling machines and the
19 trays -- the pans that you have mentioned in
20 order to increase the production of
21 microgranules."

1 interrupted in paragraph No. 8, Article No. 8.

2 Q. And this is a contract between
3 Ethypharm Spain and Rimafar, correct?

4 A. Correct.

5 Q. Now, at some point during this time,
6 did you become aware that Belmac Corporation of
7 the United States acquired Laboratorios
8 Rimafar?

9 A. No. We learned that later and we
10 suspect that that's why Mr. Perez Ayala
11 suspended the signature of the contracting
12 Article No. 8.

13 Q. When did you learn that Rimafar had
14 been acquired by Belmac Corporation of the
15 United States?

16 A. I was told so by Mr. Perez Ayala and
17 I asked him are you then going to be stopping
18 being the general director, because that's what
19 happened in the acquisitions. And he told me
20 no, that he had been appointed general director
21 of the new company.

7 (Pages 173 to 176)

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1 Q. Did he tell you what the name of the
2 new company would be?
3 A. Yes, of course. Belmac.
4 Q. Is that Laborotorios Belmac?
5 A. At that point I could not know, but
6 yes.
7 MR. STEWART: I want to mark three
8 additional exhibits to assist us.
9 The first is for Exhibit 16 a draft
10 contract of beginning with Bates No. EP 009056.
11 Exhibit 17 is a copy of a letter
12 from Mr. de Basilio dated August 3, 1992.
13 And Exhibit 18 is a fax cover sheet
14 with an attached multipage document beginning
15 with Bates No. EP 004686.
16 (Deposition Exhibit Nos. 16 through
17 18 were marked for identification.)
18 BY MR. STEWART:
19 Q. Mr. de Basilio, I would like you to
20 first look at Exhibit 16, and I have relatively
21 few questions. And I would propose that after

1 Q. Do you know whether Mr. Ayala was
2 responsible for any of the language in
3 Exhibit 16?
4 A. Yes, although do not ask me which
5 parts because it would be impossible for me to
6 remember.
7 Q. Did you discuss the terms of this
8 agreement with Mr. Perez Ayala?
9 A. Yes.
10 Q. You told us this is an agreement
11 with Laborotorios Belmac U.S.A.; is that
12 correct?
13 A. True.
14 Q. At this time did you know that
15 Laborotorios Belmac was owned by an American
16 corporation?
17 A. Of course.
18 Q. And what was the name of the
19 American corporation that owned Laborotorios
20 Belmac?
21 A. Belmac Corporation of the United

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1 you have had a chance to familiarize yourself
2 with the contents of the document that I ask
3 you the questions, and then if you need
4 additional time that you take as much time as
5 you need to review the documents to review the
6 contract, the draft contract in detail.
7 A. I agree. And if there is a question
8 which I need to go back and read it, I will do
9 that.
10 Q. Fine.
11 First, who made the draft of this
12 document? I say who drafted the contrato de
13 fabricacion?
14 A. It was prepared between Ethypharm
15 France, Ethypharm Spain, and Rimafar -- Belmac
16 at that time.
17 THE WITNESS: Belmac Spain.
18 BY MR. STEWART:
19 Q. Was the written document prepared by
20 Ethypharm Spain and Ethypharm France?
21 A. Yes, jointly with Mr. Perez Ayala.

1 States.
2 Q. Now, there is a telefax stamp on the
3 document which has a date of March 31, 1992.
4 Do you see that?
5 A. Yes.
6 Q. As of this date, had you had any
7 communications with anyone in the United
8 States -- at Belmac Corporation in the United
9 States?
10 A. I just remembered that I was
11 introduced to some people, but I don't remember
12 who. I don't know if I met Mr. Rossignol at
13 that time.
14 Q. Who is Mr. Rossignol?
15 A. I believe he was the president of
16 Belmac Corporation in the United States.
17 Q. Did you have any discussions with
18 Mr. -- do you recall having any discussions
19 with Mr. Rossignol regarding the terms of
20 Exhibit 16?
21 A. No. I have stated it was with Perez

8 (Pages 177 to 180)

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1 Ayala.
 2 Q. And turn, please, to paragraph 15 of
 3 the agreement. And this provision pertains to
 4 arbitration of any disputes that might arise.
 5 Is that fair?
 6 MR. BOSTWICK: I'm sorry. Did you
 7 say page 15 or paragraph 15?
 8 MR. STEWART: Paragraph 15. Page 9
 9 of the document.
 10 MR. BOSTWICK: All right. I'm
 11 sorry. Can you repeat the question.
 12 (The record was read as requested.)
 13 THE WITNESS: Yes.
 14 BY MR. STEWART:
 15 Q. I'm going to read the last two
 16 sentences of paragraph 15.
 17 "In the event they are unable to
 18 agree on an arbitrator, one shall at request of
 19 one of the parties be appointed by the Spanish
 20 chamber of commerce. The parties agree to
 21 fulfill each and every formality required under

1 typical clause for parties in Spain?
 2 A. Yes.
 3 Q. Is there any requirement under
 4 Spanish law that an arbitration provision must
 5 involve a Spanish arbitrator?
 6 A. You are asking a question that I do
 7 not know how to respond.
 8 Q. Okay. Turn to page 10 of
 9 Exhibit 16. And the persons who are to sign
 10 this draft contract are Mr. de Ayala for
 11 Laboratorios Belmac SA, correct?
 12 A. Yes.
 13 Q. And Mr. Patrice Debregeas for
 14 Ethypharm SA, correct?
 15 A. Yes.
 16 Q. Was this Ethypharm Spain or
 17 Ethypharm France that Mr. Debregeas was signing
 18 for?
 19 MR. BOSTWICK: Objection to the
 20 form. He didn't sign apparently.
 21 BY MR. STEWART:

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1 Spanish law."
 2 Have I read that correctly?
 3 A. Yes.
 4 Q. Was there any consideration given to
 5 having disputes resolved by an American
 6 arbitrator under American law?
 7 MR. BOSTWICK: Objection. Are you
 8 talking about in the context of this draft, the
 9 contract that wasn't signed?
 10 MR. STEWART: Yes. That's what I
 11 meant.
 12 THE WITNESS: Yes.
 13 BY MR. STEWART:
 14 Q. And who brought up that
 15 consideration?
 16 A. That is the clause. That is common
 17 courtesy in the Spanish legislation.
 18 Q. What is common courtesy in the
 19 Spanish legislation?
 20 A. This type of arbitration clause.
 21 Q. This type of arbitration clause is a

1 Q. Well, was there -- when Mr. Patrice
 2 Debregeas appears above Ethypharm SA, what
 3 company do you understand Ethypharm SA to be?
 4 A. It is stated in the first page of
 5 the contract.
 6 Q. Well, in the first page of the
 7 contract it refers to Ethypharm with an address
 8 of Marques de la Ensenada; is that correct?
 9 A. That's correct.
 10 Q. So do you understand that to be then
 11 Ethypharm Spain?
 12 A. Correct.
 13 Q. Did you or Mr. de Ayala consider
 14 including Belmac Corporation as a party to this
 15 agreement?
 16 A. No.
 17 Q. And why not?
 18 A. If you tell me a reason why yes.
 19 Q. I know of no reason. Was there any
 20 reason --
 21 A. Me, neither.

9 (Pages 181 to 184)

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1 Q. Turn, please, to Exhibit --
 2 MR. BOSTWICK: Objection to the form
 3 there.
 4 BY MR. STEWART:
 5 Q. Turn, please, to Exhibit 17.
 6 Do you recognize Exhibit 17 as a
 7 letter that you wrote to Mr. de Ayala?
 8 A. Yes.
 9 MR. STEWART: For the record, I'm
 10 going to read the translation of the text of
 11 the letter.
 12 "We are hereby attaching the
 13 Omeprazole file 20 milligram that is delivered
 14 based on the collaboration agreement between
 15 Belmac and Ethypharm for the manufacture of the
 16 former with the authorization of Laboratorios
 17 Andromaco."
 18 Have I read that correctly?
 19 MR. BOSTWICK: You are not asking
 20 him to verify your translation, I take it.
 21 MR. STEWART: Well, if he has any

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1 the -- at the -- on the upper right portion of
 2 the letter.
 3 A. "This explains the situation that
 4 has been -- that occurred between Ethypharm and
 5 Mr. Perez de Ayala in writing by Mr. Perez de
 6 Ayala stating that he did not need the
 7 documentation from Ethypharm because apparently
 8 he had his own sources for documentation. But
 9 the existing sources were the ones by abstract
 10 they were in violation of the patent. And why
 11 it says in the writing is that after stating
 12 that he didn't need it. He was asking for it.
 13 Because he could not register the product
 14 without the analytical documentation of
 15 Ethypharm and without the manufacturing method
 16 from Ethypharm among other relevant data."
 17 Q. And could you confirm for us what
 18 was contained in the Omeprazole file that was
 19 delivered by Ethypharm to Mr. Ayala at
 20 Laboratorios Belmac?
 21 MR. BOSTWICK: Objection. That's

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1 major disagreement with the translation, I
 2 certainly want to know that.
 3 THE WITNESS: It's perhaps because
 4 there is some comma missing in the letter. We
 5 are delivering the documentation of Omeprazole
 6 to Belmac, and for the manufacturing by Belmac
 7 and the authorization by Laboratorios Andromaco
 8 is to be able to deliver that documentation
 9 because we had given that previously to
 10 Andromaco Laboratory.
 11 MR. BOSTWICK: In fairness, can you
 12 read him the handwriting portion as well.
 13 MR. STEWART: Sure.
 14 BY MR. STEWART:
 15 Q. Whose handwriting appears on the --
 16 on Exhibit 17?
 17 A. Mine. And I am very happy to have
 18 written that.
 19 Q. I assume so since your counsel
 20 wanted me to read it.
 21 Would you read what is written on

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1 clearly Phase 2.
 2 MR. STEWART: I have to know what we
 3 are talking about in order to ask questions
 4 pertaining to the delivery of the material. So
 5 it's -- it seems relatively clear as to what
 6 this is about, but I need that to be confirmed
 7 by this witness, otherwise questions pertaining
 8 to who it was delivered to really is
 9 meaningless.
 10 MR. BOSTWICK: I will maintain my
 11 objection.
 12 THE WITNESS: The documentation is
 13 what I described yesterday. The registry
 14 dossier necessary in order to obtain the
 15 authorization for manufacturer -- the necessary
 16 documentation to obtain the authorization for
 17 commercialization.
 18 BY MR. STEWART:
 19 Q. Did you ever send the dossier that
 20 you just described to anyone at Belmac
 21 Corporation in the United States?

10 (Pages 185 to 188)

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1 A. No, not at that time.
 2 Q. Did you ever send such documentation
 3 to Belmac Corporation in the United States or
 4 Bentley Pharmaceuticals after Belmac
 5 Corporation changed its name to Bentley?
 6 A. No. It may have been the case that
 7 I send partial documents, but it makes no
 8 sense.
 9 Q. You don't have a memory of sending
 10 partial documentation to anyone in the United
 11 States, do you?
 12 A. No.
 13 Q. Turn, please, to Exhibit 18.
 14 MR. STEWART: Why don't we go off
 15 the record for maybe a ten-minute break.
 16 MR. BOSTWICK: Sure.
 17 THE VIDEOGRAPHER: The time is
 18 9:50:36. Off the record.
 19 (A short recess was taken.)
 20 THE VIDEOGRAPHER: On the record.
 21 The time is 10:08:52.

1 that you have described from Andromaco?
 2 A. No.
 3 Q. Did Andromaco just give it to
 4 Ethypharm?
 5 A. Andromaco was Ethypharm's client and
 6 they had signed contracts in which it was
 7 stated that the authorization -- documentation
 8 was supposed to be given for free.
 9 Q. Did Andromaco ever purchase
 10 Omeprazole from Ethypharm?
 11 MR. BOSTWICK: I'm going to object.
 12 Can you tell me how this is at all
 13 related to Phase 1.
 14 MR. STEWART: This last aspect is
 15 basically background.
 16 MR. BOSTWICK: I'm going to object
 17 to further questions in this area until
 18 Phase 2.
 19 MR. STEWART: Okay. Let me just
 20 have the answer to that question and I will
 21 move on.

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1 BY MR. STEWART:
 2 Q. Mr. de Basilio, before we go to
 3 Exhibit 18, I have a couple of more questions
 4 on Exhibit 17. If you could just look at that.
 5 In your letter to Mr. de Ayala, you
 6 mention the authorization of Laboratorios
 7 Andromaco. Who was Andromaco?
 8 A. Yesterday in my deposition, I said I
 9 had been director with Andromaco and
 10 Laboratorios Andromaco had a dossier of
 11 Omeprazole that I had made the recommendation
 12 to purchase when I was the director of that
 13 laboratory.
 14 Q. Was that a dossier pertaining to
 15 Omeprazole that Andromaco received from
 16 Ethypharm?
 17 A. No. The data that was acquired by
 18 Andromaco, they bought it from what was
 19 circulating in the market and the added data
 20 was what Ethypharm provided.
 21 Q. Did Ethypharm purchase the dossier

1 MR. BOSTWICK: What was the
 2 question?
 3 MR. STEWART: Whether Andromaco
 4 ever -- just for completeness, whether
 5 Andromaco ever purchased Omeprazole from
 6 Ethypharm.
 7 THE WITNESS: Yes. They were our
 8 first client.
 9 BY MR. STEWART:
 10 Q. Mr. de Basilio, if you would turn,
 11 please, to Exhibit 18.
 12 Would you describe the significance
 13 of Exhibit 18?
 14 Let me withdraw that. That's the
 15 second question.
 16 I'm going to read to you the text of
 17 your fax to Mr. Debregeas and Mr. Leduc which
 18 is written in English, and by agreement we can
 19 give our translator a short rest.
 20 "Please find a copy of the documents
 21 signed by Mr. P de Ayala which leaves us in a

11 (Pages 189 to 192)

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1 better condition to continue with the final
2 discussion of the contract. I hope dot, dot,
3 dot. Best regards, Adolfo de Basilio."

4 Have I read that correctly?

5 MR. BOSTWICK: For the record, it is
6 "P" de Ayala, not "PD" Ayala. Small
7 correction.

8 MR. STEWART: Very small.

9 THE WITNESS: And "de" is not
10 written in my name.

11 MR. STEWART: You are right.

12 BY MR. STEWART:

13 Q. Other than that -- other than those
14 two corrections, was my reading all right?

15 A. Yes.

16 Q. What was the significance of this
17 document that Mr. Perez de Ayala signed?

18 A. This was very important. I remember
19 this document very well because if you notice
20 the date, it had been more than a year, close
21 to two that we were in relation and we did not

1 Q. In Madrid?

2 A. In Madrid.

3 Q. And turn, please, to the annexes to
4 the document. And I'm going to refer you to
5 Bates No. EP 0046 -- 004688. And I'm going to
6 read the second paragraph at the top of the
7 page.

8 "The items used for Ethypharm's
9 manufacturing processes in which moreover are
10 Ethypharm's property are as follows."

11 And then there follows a list of
12 what appears to be equipment and machinery
13 which then continues on page EP 004689.

14 Have I read the paragraph correctly?

15 MR. BOSTWICK: Well, the sentence?

16 BY MR. STEWART:

17 Q. The sentence.

18 A. Yes.

19 Q. Now, without getting into the
20 details of the particular pieces of machinery
21 or equipment and recognizing that you may not

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1 have a signed contract. One was right.

2 MR. STEWART: One was what?

3 THE INTERPRETER: That it was right.
4 One was correct.

5 THE WITNESS: Proper contract.

6 A. And the reason that I remember these
7 very clearly is -- the importance of these very
8 clearly is because France was concerned that we
9 had all of our machinery, all of our know-how
10 in the hands of Perez de Ayala and no signed
11 contract.

12 And I was also myself very concerned
13 because as I said yesterday, I am
14 crystallography professor and I had my entire
15 class waiting for me in the classroom. And I
16 said "I will not leave here without taking with
17 me these contracts signed. It is not a
18 contract. It's a document."

19 Q. So you met with Mr. Perez de Ayala
20 in person; is that correct?

21 A. I was in his office.

1 be the technical person who has complete
2 knowledge, did you consider any of the
3 equipment machinery that is listed to be
4 confidential or proprietary?

5 MR. BOSTWICK: I'm actually going to
6 object, and on this one I'm just going to
7 directly instruct him not to answer.

8 That is absolutely clearly a Phase 2
9 issue. It has nothing to do with Phase 1. And
10 I -- look, I love this document. I love, you
11 know, it's part of our case for Phase 2. But I
12 cannot imagine an articulation of why we are
13 spending time on Phase 1 on this.

14 MR. STEWART: Here is the
15 articulation. That after identifying whether
16 there are any items in this list that are
17 considered to be proprietary, confidential or
18 in some other way by this witness a trade
19 secret, I am going to ask this witness whether
20 any of this -- any of this equipment or
21 machinery was ever sent to Belmac Corporation

12 (Pages 193 to 196)

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1 in the United States, whether it was ever sent
2 to Bentley Pharmaceuticals or whether to this
3 witness's knowledge --

4 MR. BOSTWICK: Why don't you do the
5 first question -- the second question and not
6 the first?

7 MR. STEWART: -- whether he was aware
8 whether anyone at Bentley, Jim Murphy, for
9 example, ever inspected any of this stuff.

10 MR. BOSTWICK: Why don't you do the
11 second question and not the first. You don't
12 have to define which ones were proprietary.
13 Did anything on this list go to Jim Murphy?
14 That would be perfectly appropriate.

15 But for him to try to piece together
16 what is proprietary and what is not is exactly
17 the type of thing that you all have been
18 complaining about, and it's precisely the type
19 of thing that we have agreed very specifically
20 to stay away from.

21 MR. STEWART: Well, all I can say is

1 record, I'm going to ask him the question now.

2 BY MR. STEWART:

3 Q. Mr. de Basilio, with respect to the
4 items of equipment and machinery identified on
5 EP 004688 and 004689, did you consider any of
6 this material to be confidential, proprietary,
7 or in any way a trade secret?

8 MR. BOSTWICK: I'm going to object
9 and instruct him not to answer that specific
10 question because it's specifically something --
11 you don't have to translate this for him. It's
12 for the record.

13 I am going to object for the record.
14 That is specifically beyond the scope of
15 Phase 1. The record will clearly show that in
16 my depositions vigorous objections were made to
17 things that were much further away from Phase 2
18 than this very directed question.

19 And that is the basis for my -- and
20 I backed off on Mr. Stewart's request, on
21 Veronica Abreu's request, and on Joe whose name

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1 that you have indicated you will instruct the
2 witness not to answer, and I may have you go
3 ahead and make that instruction.

4 But in terms of the Phase 1 issues
5 involved, if there is any intention on the part
6 of Ethypharm to provide an affidavit or to
7 provide testimony of any kind that technical
8 information, trade secrets were directly
9 communicated to Jim Murphy or to anyone at
10 Bentley in the United States, then I'm going to
11 vigorously object, ask that all such references
12 be stricken because I am being denied an
13 opportunity to discover on precisely that
14 issue.

15 MR. BOSTWICK: Why don't you simply
16 ask him whether these -- anything here was
17 given to Murphy. That would be perfectly
18 appropriate and not objectionable. But to go
19 through and say which ones are confidential and
20 why is not.

21 MR. STEWART: All right. For the

1 I can't recall's request on a number of
2 occasions, and that question Mr. Stewart well
3 knows is beyond the scope of what he himself
4 has requested that we not get into.

5 MR. STEWART: I'm not going to
6 respond on the record, but I will leave my
7 prior comments and explanation as to the
8 purpose of the question standing.

9 BY MR. STEWART:

10 Q. Mr. de Basilio, let me ask you a
11 different question.

12 Was any of the items of equipment or
13 machinery that are listed on these two pages,
14 to your knowledge, ever shipped to Belmac
15 Corporation in the United States or as it later
16 was known Bentley Pharmaceuticals?

17 A. Not to my knowledge.

18 Q. To your knowledge, did Jim Murphy or
19 anyone else at Bentley Pharmaceuticals ever
20 inspect the machinery that is included or that
21 appears to be included on these two pages?

13 (Pages 197 to 200)

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1 A. At that time Mr. Murphy was not in
2 the company. Later the answer is affirmative.
3 Q. When you say "later the answer is
4 affirmative," tell me when Mr. Murphy inspected
5 any of this equipment.
6 A. In several occasions when we met at
7 the Zaragosa plant.
8 Q. Tell me what Mr. Murphy --
9 Mr. Murphy was in your presence; is that right?
10 A. Yes.
11 Q. Tell me what Mr. Murphy and you did
12 which leads you to believe that he inspected
13 the equipment.
14 A. What do you mean by inspection?
15 Q. What I have in mind is something
16 other than looking at the equipment. I have in
17 mind by inspection is that a person would
18 measure, would ask for explanation, would ask
19 for particular settings on a machine, would ask
20 for details of the operation of equipment.
21 A. Yes, because he was a technical

1 machinery?
2 A. We can verify this, but I believe it
3 was the year '96.
4 THE WITNESS: I believe.
5 A. I believe it is not correct. I do
6 not have the certainty. I think that we have
7 to check this. If you ask me for a specific
8 date, I have to look it up.
9 Q. Where would you look in order to get
10 the date?
11 A. In the purchase order for the
12 machinery.
13 Q. Would it be in your diaries?
14 A. Possibly.
15 Q. We may take some time over the break
16 to get that information, but what is your best
17 estimate? I understand you can't be precise.
18 A. '96.
19 Q. Now, you told me that with
20 Mr. Murphy you explained the details between
21 Astro pellets and Ethypharm pellets and why you

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1 person and I personally explained it to him.
2 Q. What did you observe and what did
3 you explain to him?
4 A. Exactly I do not remember, but he
5 knew the details of Ethypharm's technology
6 because I had explained it to him, specifically
7 the difference that existed between the Astra
8 pellets and the Ethypharm pellets and why we
9 are using these machines and not others.
10 Q. When did you have this discussion?
11 A. I talked several times with Murphy,
12 so I don't know when did I tell him this.
13 Q. Did you -- can you give me the years
14 in which you talked to Mr. Murphy about the
15 difference between the Astra pellets and the
16 Ethypharm pellets?
17 A. Logically when he took charge of the
18 company, between '94 and '95, and later were
19 the discussions when we installed the new
20 machinery.
21 Q. When did you install the new

1 were using certain machines and not others.
2 What other topics did you discuss
3 with Mr. Murphy concerning the technical
4 aspects of the production?
5 MR. BOSTWICK: Objection. Vague.
6 THE WITNESS: I told you what I
7 remember. I do not remember more details.
8 BY MR. STEWART:
9 Q. Did you give Mr. Murphy any written
10 material concerning the difference between
11 Astra pellets and Ethypharm pellets?
12 A. Most probably because I remember
13 that in that time I used to make a drawing to
14 explain the difference.
15 Q. This was a handwritten drawing that
16 you may have given him?
17 A. Not that I gave it to him.
18 Delivered to him, but maybe in his office I
19 made a drawing and the paper stayed there.
20 Q. Can you tell us for certain that you
21 made such a drawing?

14 (Pages 201 to 204)

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1 A. I did them quite often, but to make
2 certain I don't know. I explain it to him
3 several times.

4 Q. So is your answer that you don't
5 know or that you believe so or what is your
6 answer?

7 MR. BOSTWICK: Objection. Asked and
8 answered.

9 THE WITNESS: I'm not sure.

10 BY MR. STEWART:

11 Q. Other than a drawing that you might
12 have made and given to Mr. Murphy in explaining
13 the difference between Astra pellets and Ethy
14 pellets, did you give him any other written
15 material?

16 A. Of course he would get copies of
17 every materials that we used since he took over
18 the direction of the company.

19 Q. How do you know that he would get
20 copies of this material?

21 A. There are faxes that were directed

1 BY MR. STEWART:

2 Q. When you say "Belmac Corporation,"
3 are you referring to Laboratorios Belmac?

4 A. Belmac, I say, not Belmac
5 Corporation. I said that Belmac sent to the
6 U.S.

7 Q. It may be a matter of translation,
8 but just to be clear, from your own knowledge,
9 are you aware of any of the technical material
10 or information that I described that was sent
11 to Mr. Murphy at Bentley?

12 A. I could not know.

13 Q. Have you told me -- or withdraw
14 that.

15 Is there any technical documentation
16 of which you are personally aware that was sent
17 to Mr. Murphy in the United States?

18 MR. BOSTWICK: Objection in the
19 sense that nothing is before him for his
20 review.

21 THE WITNESS: Nothing is what?

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1 to his company in the United States, and then
2 his subordinates would ask for materials and
3 ask questions and ask for copies.

4 Q. Do you have in mind any particular
5 facts or written material that went to Jim
6 Murphy concerning technical details of
7 machinery or processes or methodology or
8 confidential manufacturing information?

9 A. I have in my hands 1992 text in
10 which he was not in charge of the company yet,
11 but this same document most probably was
12 shipped to the United States and he had access
13 to it.

14 Q. Do you know that it was shipped to
15 the United States?

16 A. No, because I wasn't --

17 MR. STEWART: Was that "not" or
18 "no"?

19 THE WITNESS: No. Because I was not
20 inside the Belmac Corporation, I didn't know
21 what the employees were doing.

1 MR. BOSTWICK: You can answer the
2 question. I am just putting the objection on
3 the record.

4 THE WITNESS: You have to review the
5 documentation and see what was shipped.
6 Talking about a period from the time that
7 Mr. Murphy took over the company in 1994 up
8 until beyond the year 2000.

9 BY MR. STEWART:

10 Q. What I am looking for is whether
11 there is some document that you considered to
12 be a technical trade secret that you have in
13 mind that Mr. Murphy was -- that was sent by
14 Ethypharm to Mr. Murphy.

15 A. Yes. I remember in one occasion.

16 Q. And what is that occasion?

17 A. There was a press campaign in which
18 to promote the company they use photographs of
19 our machines, our equipment. They talked
20 openly and publicly about our technology, and
21 Mr. Debregeas, Ethypharm's president, sent a

15 (Pages 205 to 208)

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1 copy of these documents to Mr. Murphy stating
2 that under no circumstances could show this
3 machine that in particular it was an important
4 piece of our know-how and technology.

5 Q. As you sit here today, can you
6 recall any other material that you considered
7 to be proprietary or confidential that was sent
8 to Mr. Murphy?

9 MR. BOSTWICK: I am just going to
10 object and clarify that your question is
11 without the benefits of reviewing documents
12 that you are asking?

13 MR. STEWART: That is correct. That
14 is correct.

15 MR. BOSTWICK: You can translate.

16 THE WITNESS: My answer would have
17 been that in -- from a period ten years it's
18 very difficult to remember these things. I
19 just happened to remember one.

20 MR. STEWART: May I have the
21 question and the witness's answer back, please.

1 Do you recognize that letter?

2 A. Yes.

3 Q. And attached to Mr. Debregeas's
4 letter there are newspaper -- a copy of a
5 newspaper article or magazine article and some
6 other material.

7 Do you see that?

8 A. Yes.

9 Q. Is this the material that you were
10 referring to?

11 A. Yes, but it is not complete.

12 MR. STEWART: I am advised by the
13 videographer that we are about out of time.

14 THE VIDEOGRAPHER: This ends Tape
15 Number 1 of Volume 2 of the de Basilio
16 deposition. The time is 10:54:56. Off the
17 record.

18 (A short recess was taken.)

19 THE VIDEOGRAPHER: On the record
20 with Tape Number 2 of Volume 2 of the testimony
21 of Adolfo de Basilio in the matter of Ethypharm

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1 (The record was read as requested.)

2 BY MR. STEWART:

3 Q. Is there any other material that you
4 remember?

5 A. If you provided me with some
6 documentation, I would remember more things but
7 without documentation --

8 Q. Without documentation, you do not
9 remember?

10 A. I cannot remember.

11 MR. STEWART: Let's have marked as
12 the next exhibit a document with a fax cover
13 sheet dated April 8, 1999 beginning with
14 EP 009112 and continuing.

15 (Deposition Exhibit No. 19 was
16 marked for identification.)

17 BY MR. STEWART:

18 Q. Mr. de Basilio, I direct your
19 attention to a letter which is part of
20 Exhibit 19. It's in English from Mr. Patrice
21 Debregeas.

1 versus Bentley. The date is August 3, 2006.
2 The time is 11:13:09.

3 BY MR. STEWART:

4 Q. Mr. de Basilio, please turn to
5 Exhibit 18, and page EP 004690.

6 And I'm going to read the title of
7 this page, "Technical Documentation Intended
8 for Health Department for the Registration and
9 Authorization of Microgranule Room."

10 Have I read that correctly?

11 A. Yes.

12 Q. And explain, please, what is this --
13 what is the documentation that is listed on
14 this page and on the following page?

15 MR. BOSTWICK: Objection as vague.

16 THE WITNESS: They are GMP forms.

17 BY MR. STEWART:

18 Q. Were the documents that are listed
19 on these two pages drafted or otherwise
20 prepared by Ethypharm?

21 A. Yes.

16 (Pages 209 to 212)

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1 Q. And to be clear, is it your
2 testimony that these documents were not
3 publications by some third party, but rather
4 were developed and prepared by Ethypharm?
5 MR. BOSTWICK: Objection. Phase 2.
6 THE WITNESS: They are Ethypharm's
7 property.
8 BY MR. STEWART:
9 Q. That was not my question. I am
10 trying to understand whether any or all of this
11 material consisted of publications that
12 Ethypharm took from some -- from a public
13 source or from some private source that anyone
14 could purchase?
15 MR. BOSTWICK: Objection. May I
16 have a proffer as to how they could relate to
17 Phase 1 discovery?
18 MR. STEWART: Sure. If the answer
19 is that the -- that they are materials that
20 were developed by Ethypharm, then I intend to
21 ask questions as to whether any of these

1 really do not concern you. And so all I am
2 going to do is I am going to amend my previous
3 question.
4 And my amendment is as follows: Are
5 any of the materials listed on these two pages;
6 that is, pages 4690 and 4691, technical
7 materials that Ethypharm -- that you consider
8 to be proprietary and confidential to
9 Ethypharm?
10 A. Yes.
11 Q. And does that include all of the
12 materials or only some of them?
13 A. Some of them.
14 Q. Now, to your knowledge, were any of
15 these materials ever sent by Ethypharm to Jim
16 Murphy in the United States?
17 A. I have told you before that I am not
18 totally certain that they were shipped.
19 Q. Now, for the record, as you sit
20 here, are you able to distinguish which of the
21 materials that are listed on these two pages

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1 materials, to his knowledge, were provided
2 directly to Jim Murphy.
3 If the answer is no, they were
4 basically publicly available materials, then I
5 will move on. I'm also going to ask him
6 whether he considers these materials to be
7 confidential or proprietary or in any way
8 constituting what he understands to be trade
9 secrets and whether you will instruct him not
10 to answer. That's the purpose of it.
11 MR. BOSTWICK: Okay. Can we go off
12 the record for a moment.
13 THE VIDEOGRAPHER: The time is
14 11:19:13.
15 (Discussion off the record.)
16 THE VIDEOGRAPHER: On the record.
17 The time is 11:25:01.
18 BY MR. STEWART:
19 Q. Mr. de Basilio, during the break
20 Mr. Bostwick and I have had a colloquy to try
21 to straighten out Phase 1, Phase 2 issues which

1 are trade secrets and which are not?
2 And by "trade secrets," what I mean
3 is technical information that Ethypharm
4 considers to be confidential and proprietary.
5 MR. BOSTWICK: I'm going to object.
6 I thought this was the type of question that we
7 were not going to ask.
8 MR. STEWART: The question is
9 whether he is able to distinguish and then I
10 will make a proffer on the record just to
11 preserve my rights.
12 THE WITNESS: No, because I am not a
13 technician on QA.
14 BY MR. STEWART:
15 Q. Referring to Exhibit 19, you
16 indicated before our break that the material
17 that is part of Exhibit 19 was incomplete.
18 Do you recall that testimony?
19 A. Yes.
20 Q. Do you have in mind any particular
21 document, photograph or something that you

17 (Pages 213 to 216)

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1 recognize as missing?
 2 A. Yes. As I have said, in those days
 3 there was a press campaign and many things were
 4 published.
 5 Q. Is there a particular document that
 6 you have in mind that you know is not here?
 7 A. They are missing pictures of our
 8 machinery and the manufacturing halls.
 9 MR. STEWART: Did you say "halls,"
 10 rooms?
 11 THE INTERPRETER: Right.
 12 THE WITNESS: And some other
 13 articles that were published. As I said, there
 14 were many.
 15 MR. STEWART: Let me have marked as
 16 the next exhibit a contrato de fabricacion
 17 dated January 12th of 1993.
 18 (Deposition Exhibit No. 20 was
 19 marked for identification.)
 20 BY MR. STEWART:
 21 Q. Mr. de Basilio, do you recognize

1 during this time?
 2 A. Yes.
 3 Q. Who else participated in those
 4 negotiations?
 5 A. The people I mentioned before when
 6 this question has come up.
 7 Q. Well, forgive me, but I don't
 8 remember those people.
 9 A. Ethypharm France, Ethypharm Spain,
 10 and Mr. Perez de Ayala.
 11 Q. That part I remember. Maybe I
 12 didn't ask you. Who from Ethypharm France
 13 participated in these negotiations?
 14 A. I have said already and asked if I
 15 can talk about her, Roseline Joanesse. And I
 16 am told yes.
 17 Q. That's Roseline Joanesse?
 18 A. Joanesse.
 19 Q. Anyone else from Ethypharm France?
 20 A. Yes. A very long list.
 21 Q. Well, who from Ethypharm France

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1 Exhibit 20 as a draft manufacturing agreement
 2 between Ethypharm Spain and Laboratorios
 3 Belmac SA?
 4 A. Yes, because we have seen it this
 5 morning in Exhibit No. 16.
 6 Q. And --
 7 MR. BOSTWICK: The witness is paying
 8 more attention than me.
 9 BY MR. STEWART:
 10 Q. The only difference is that
 11 Exhibit 16 has a fax cover sheet that shows a
 12 date of March 31 of 1992, correct?
 13 A. And it is the draft preliminary to
 14 the next.
 15 Q. All right. And actually, I misspoke
 16 because -- there are other differences between
 17 16 and Exhibit 20, correct?
 18 A. Correct.
 19 Q. Did you have further -- did you
 20 personally have further negotiations with Perez
 21 de Ayala regarding a manufacturing agreement

1 participated in these negotiations?
 2 MR. BOSTWICK: Objection. Time
 3 period?
 4 MR. STEWART: Time up to December --
 5 January 12 of 1993.
 6 THE WITNESS: Mr. Debregeas,
 7 Mr. Leduc, Mr. Igonet, Roseline Joanesse, and
 8 the commercial director, Mr. Liorzou, Marcelle
 9 Gaviolle. And probably I am forgetting
 10 somebody.
 11 Normally these contracts has
 12 discussed among all those involved, and I
 13 assume, I imagine that Mr. Perez de Ayala did
 14 it, too.
 15 BY MR. STEWART:
 16 Q. Other than Mr. Perez de Ayala, do
 17 you know who was involved from Laboratorios
 18 Belmac?
 19 A. No. I only discuss things with him
 20 as far as I remember.
 21 Q. Did you have any discussions with --

18 (Pages 217 to 220)

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1 concerning this draft contract with anyone at
2 Belmac Corporation U.S.?

3 MR. BOSTWICK: Objection. Time
4 period?

5 BY MR. STEWART:

6 Q. During this time period, January 12,
7 1993?

8 A. Me personally I cannot remember, but
9 it could be that somebody in France had had
10 some contact.

11 Q. Do you have a memory of someone in
12 France having contact with anyone at Belmac
13 Corporation U.S.?

14 A. There is a letter somewhere that I
15 have read which states that Mr. Leduc attempted
16 to get in touch with Mr. Rossignol in the
17 United States.

18 Q. But you had no such contact with
19 anyone in the United States; is that correct?

20 A. As I said.

21 Q. Was Exhibit 20 ever signed?

1 read a portion of paragraph 1.

2 MR. BOSTWICK: Objection to form.

3 BY MR. STEWART:

4 Q. "One, that Laboratorios Belmac SA
5 has authorization from this general department
6 dated January 14, 1993 for the manufacture and
7 marketing of the pharmaceutical specialty
8 indicated in reference with the following
9 composition per capsule. Active principal
10 Omeprazole (CID) 20 milligram."

11 Does that portion of Section 1 of
12 this letter to the Spanish ministry of drugs
13 refresh your recollection?

14 A. Related to what?

15 Q. As to when Laboratorios Belmac
16 received authorization to manufacture and
17 market, market Omeprazole?

18 A. This is the date that I cannot
19 remember since this was property of the
20 company, but I can see clearly that it's marked
21 January 1993.

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Page 224

1 A. No.

2 Q. Now, at some point in early 1993,
3 did Laboratorios Belmac receive authorization
4 from the Spanish drug and health agency for the
5 manufacture and marketing of pharmaceutical
6 products?

7 A. I cannot remember. If you show me
8 something.

9 MR. STEWART: Let's have marked as
10 the next exhibit a document which has a date
11 stamp of April 26, 1999 and has a Bentley Bates
12 number of 008182.

13 (Deposition Exhibit No. 21 was
14 marked for identification.)

15 BY MR. STEWART:

16 Q. And Mr. de Basilio, my purpose in
17 showing you this document is to direct your
18 attention to paragraph 1 and see if the
19 following statement refreshes your
20 recollection.

21 I'm going to read a -- I'm going to

1 Q. When you say "property of the
2 company," which company did you -- are you
3 referring to?

4 MR. BOSTWICK: Objection.
5 Ambiguous.

6 THE WITNESS: Belmac Company. This
7 is the registry document that I have been
8 explaining yesterday and this morning that the
9 Spanish laboratory needs in order to
10 commercialize.

11 What I can see in this document is
12 precisely that they have utilized the Ethypharm
13 formula, but this is simply that they are the
14 registry holder.

15 MR. STEWART: Let's continue. I'm
16 going to show you two documents from early
17 1995 -- withdraw that.

18 From 1995.

19 (Deposition Exhibit No. 22 was
20 marked for identification.)

21 MR. STEWART: So the first document

19 (Pages 221 to 224)

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Page 227

1 is -- has a cover letter with a date of
2 March 15, 1995 from Javier Santos to Adolfo de
3 Basilio.

4 The next document, which I think we
5 are marking 23, is a manufacturing agreement
6 with a legend "Draft 21 March, 1995."

7 (Deposition Exhibit No. 23 was
8 marked for identification.)

9 MR. STEWART: And the third is a fax
10 cover sheet from Jim Murphy to Patrice
11 Debregeas with an attached draft agreement.
12 And the fax cover sheet is dated July 13, 1995.

13 (Deposition Exhibit No. 24 was
14 marked for identification.)

15 BY MR. STEWART:

16 Q. I would like to start with
17 Exhibit 22.

18 First, do you know who Javier Santos
19 is?

20 A. Yes. I remember him vaguely. I met
21 him at his office.

1 visited Mr. Santos with Mr. Murphy.

2 A. Let's say it was March '95.

3 Q. Now, when did you first meet
4 Mr. Murphy?

5 A. In year 1994.

6 Q. And can you give me the month?

7 A. I believe it was November toward
8 Christmas.

9 Q. And had you -- prior to your meeting
10 him, did you have any communications with
11 Mr. Murphy?

12 A. I knew he existed.

13 Q. And did you understand that he
14 was -- what did you understand was his
15 position?

16 A. The president of Belmac Corporation.

17 Q. When you say "Belmac Corporation,"
18 by that do you mean the U.S. corporation?

19 A. Exactly.

20 Q. Did you also understand that he was
21 the president or executive director of

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1 Q. And Mr. Santos is an attorney; is
2 that right?

3 A. I believe so.

4 Q. And do you have an understanding as
5 to by whom Mr. Santos was employed in March
6 of -- withdraw that.

7 Who was Mr. Santos representing on
8 or around March 15 of 1995?

9 A. Mr. Murphy. It was Mr. Murphy that
10 took me there.

11 Q. Mr. Murphy took you to Mr. Santos's
12 office?

13 A. Yes.

14 Q. And when did you go to Mr. Santos's
15 office?

16 A. The date? March 15th.

17 I do not know. It's impossible.
18 Perhaps in my notes or my agenda may be a
19 reference.

20 Q. All I am interested now is your
21 recollection of an approximate time that you

1 Laboratorios Belmac?

2 A. No. He always introduced himself to
3 me as the president of Belmac Corporation of
4 the United States.

5 Q. That's what he said?

6 A. This is what he express. He would
7 send me writings from Belmac Corporation of the
8 United States. He would give me a business
9 card from Belmac Corporation and he always
10 referred to himself as Belmac Corporation to
11 me.

12 Q. Is it your testimony that your first
13 communication with Jim Murphy was in November
14 of 1994? Or your first meeting?

15 MR. BOSTWICK: Objection.
16 Mischaracterization and asked and answered.

17 THE WITNESS: I believe that's what
18 I said in that date.

19 BY MR. STEWART:

20 Q. Well, my confusion was whether you
21 first met Mr. Murphy in November 1994 or

20 (Pages 225 to 228)

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Page 231

1 whether you had your first communication with
2 him?

3 A. Previous communications were
4 exclusively with Mr. Perez de Ayala. As he
5 arrived towards November '94, all our
6 subsequent communications and dealings were
7 almost exclusively with him.

8 Q. By "him," you mean Mr. Murphy?

9 A. Yes.

10 Q. And did you physically meet
11 Mr. Murphy in November of 1994?

12 A. I remember perfectly well that
13 occasion because Perez de Ayala had always told
14 me that there were a group of dumb American
15 investment or crazy investment people from the
16 U.S. and that they did not belong to the
17 pharmaceutical industry.

18 The surprise was when I was
19 introduced to Mr. Murphy, Mr. Perez de Ayala
20 did not speak English. He was coming in and
21 out of the hall where we were -- this

1 A. Mr. Perez de Ayala.

2 Q. In what sense?

3 A. I corroborated that Mr. Murphy
4 belong to the pharmaceutical industry and that
5 we spoke the same language.

6 Q. By speaking the same language, you
7 mean pharmaceutical language?

8 A. Yes. Besides English, the
9 pharmaceutical language.

10 Q. How long did the meeting with
11 Mr. Murphy last?

12 A. I can't remember. I remember that
13 he was sitting on a white couch, but not the
14 duration of the meeting.

15 Q. Who was present from Ethypharm in
16 addition to yourself?

17 A. I believe that in that occasion I
18 was alone. Precisely of this meeting that I am
19 talking about, when I met Mr. Murphy and I
20 realized that he was, in fact, from the
21 pharmaceutical industry.

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1 conversating.

2 MR. STEWART: The hall, did you say?

3 THE WITNESS: Room.

4 The room. We were in the
5 castellana, C-A-S-T-E-L-L-A-N-A, offices of
6 Belmac Spain.

7 And in this situation we started
8 talking about our origins and our instruction,
9 and I was surprised when I discover that
10 Mr. Murphy was with Smith Klein in French --
11 formally with Smith Klein and French.

12 And that he was telling me also that
13 he had a number of collaborators, that they all
14 belong to the pharmaceutical industry.

15 Then they weren't crazy American
16 investment people. And I say "crazy" that they
17 didn't know what they were doing, but this is
18 in the words of Mr. Perez de Ayala. Then I
19 discovered that he lied to me.

20 BY MR. STEWART:

21 Q. Who?

1 He told me also about his
2 collaborators, that some belong to Hazleton and
3 others to Huntington Research, which means, how
4 can I say, that they were high-level people.

5 Q. At the time of that meeting, what
6 did you understand Mr. Perez de Ayala's
7 position was?

8 A. I had a strange feeling because I
9 didn't understand why he had lied to me. I
10 just didn't understand.

11 Q. My question was whether -- let me
12 ask you this: Let me ask you a different
13 question.

14 Did -- was Mr. Perez de Ayala, to
15 your knowledge, still the executive director of
16 Laboratorios Belmac at the time you first met
17 with Mr. Murphy?

18 A. Of course.

19 Q. And present with Mr. Murphy was
20 Mr. Ayala, correct?

21 A. As I have said, he was coming in and

21 (Pages 229 to 232)

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1 out.

2 Q. Was anyone else present at your
3 meeting?

4 A. I just said it. I only remember
5 being myself.

6 Q. But from the side of Laborotorios
7 Belmac?

8 THE WITNESS: Laborotorios Spain?

9 BY MR. STEWART:

10 Q. Yes.

11 A. Perez de Ayala, but I cannot
12 remember. If I was -- I was in his offices.
13 Could have been more people.

14 Q. But was anyone with Mr. Murphy from
15 Belmac Corporation in the United States?

16 A. Yes.

17 Q. And who was that?

18 A. I was introduced in those years,
19 '95, '96, to Mr. Price, to Mr. Stote, someone
20 who was a police officer, and I remember him
21 because he was a real cop. And I was very

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1 THE WITNESS: I do not recognize it.

2 BY MR. STEWART:

3 Q. Did you ever receive a business card
4 from Mr. Murphy that listed his title as
5 president of Laborotorios Belmac?

6 A. In Spain, as I think in the U.S.
7 also, it is customary in Christmas to include
8 with the Christmas card a business card because
9 the secretaries that they are mailing these put
10 the -- insert their business card. So it is
11 possible that I have received a business card
12 from Spain, but the one I remember it said, the
13 ones I have, two or three are all from Belmac
14 Corporation or Bentley.

15 Q. Do you have those cards in your
16 possession?

17 A. I could look for them. I don't
18 know.

19 Q. I don't mean on your -- I don't mean
20 with you today in this room, unless you do.

21 A. Obviously not. I met Mr. Murphy

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1 emotional to speak with somebody like this
2 having known somebody like this in Spain.

3 Q. Was this person who was -- who you
4 believed to be a cop, was he from Belmac
5 Corporation in the U.S.?

6 A. I do not know what this person was
7 doing there.

8 Q. So at this first meeting, is it fair
9 to say that you are not sure whether Mr. Price
10 or Mr. Stote were present?

11 A. I am certain that there was somebody
12 else beyond that.

13 MR. STEWART: Let's have marked as
14 the next exhibit a business card.

15 (Deposition Exhibit No. 25 was
16 marked for identification.)

17 BY MR. STEWART:

18 Q. Mr. de Basilio, did Mr. Murphy
19 provide you with a business card similar to the
20 one which we have marked as Exhibit 25?

21 MR. BOSTWICK: Objection. Vague.

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1 in -- at the end of '94 we had several dealing.
2 He is president of Belmac Corporation of the
3 United States. We had several phone
4 conversations at that time. They were in
5 Florida.

6 Q. Several phone calls in Florida?

7 A. From Florida. And I remember that
8 Murphy's address on that business card that he
9 gave me listed as his address an apartment, and
10 I thought to myself that this was a small
11 operation.

12 Q. I want to return to Exhibit 22 and
13 the meeting that you had with Mr. Murphy
14 sometime in March of 1995.

15 MR. BOSTWICK: To clarify, is this
16 the meeting with the lawyer and Mr. Murphy?

17 MR. STEWART: Yes.

18 BY MR. STEWART:

19 Q. The meeting is with Mr. Murphy and
20 Mr. Javier Santos.

21 And tell us what happened at that

22 (Pages 233 to 236)

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1 meeting.
 2 A. We were discussing a contract.
 3 Q. And if you will look at Exhibit 22,
 4 you see there are two documents; one is a
 5 memorandum of understanding, and one is the
 6 manufacturing agreement, correct?
 7 A. Yes.
 8 Q. Now, referring to the memorandum of
 9 understanding, that memorandum of understanding
 10 is between Mr. Murphy on behalf of Laboratorios
 11 Belmac, correct, and on behalf -- and by
 12 Mr. Patrice Debregeas on behalf of Ethypharm
 13 Spain and Ethypharm France, correct?
 14 A. Exactly.
 15 Q. And if you turn to the draft of the
 16 manufacturing agreement, the parties are the
 17 same, correct?
 18 A. Correct.
 19 Q. Yesterday you described the
 20 manufacturing agreement which was dated
 21 March 23 of 2000, Exhibit 1, as an outsourcing

1 He told me to go to the office of the lawyers,
 2 C-R-E-M-A-D-E-S, to have these cautions also
 3 because he was already in the United States.
 4 Q. In your negotiations with -- did you
 5 have negotiations with Mr. Murphy directly?
 6 A. Yes.
 7 Q. And were you in contact with
 8 Ethypharm France in connection with these
 9 negotiations?
 10 A. Yes, of course.
 11 Q. And look at the Exhibit 23, page 2.
 12 Can you tell me whose handwriting appears?
 13 A. No. I do not know who that may have
 14 been.
 15 Q. Turn to page 7. And what is the
 16 governing law that is provided in the draft
 17 contract?
 18 A. The Spanish. It's a contract
 19 between two Spanish laboratories.
 20 Q. There is nothing surprising about
 21 Spanish law as you see it. Is that so?

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Page 240

1 agreement. Do you recall that?
 2 A. Thank you to the translator.
 3 Q. Did you consider the draft
 4 manufacturing agreement dated March 14, 1995
 5 also as an outsourcing agreement?
 6 A. This is a proposal that Belmac was
 7 making for an outsourcing contract that was not
 8 acceptable for -- by Ethypharm.
 9 Q. Turn, please, to Exhibit 23.
 10 I call your attention to the date at
 11 the upper -- at the top of the document. This
 12 is a draft 21 March 1995. Do you see that?
 13 A. Yes.
 14 Q. And can you tell me whether you and
 15 Mr. Murphy negotiated terms between March, the
 16 draft of 14 March of 1995 and the draft of
 17 21 March of 1995?
 18 A. Yes. I used to negotiate with them.
 19 Yes, but I remember that people didn't speak
 20 English and I was the person who spoke English.
 21 And Mr. Murphy didn't speak Spanish, either.

1 MR. BOSTWICK: Objection. Vague.
 2 Form.
 3 MR. STEWART: Let me ask the
 4 question again.
 5 BY MR. STEWART:
 6 Q. To your knowledge and understanding,
 7 was there anything unusual about this draft
 8 agreement having a provision that Spanish law
 9 would apply to construe the terms?
 10 A. No. The only unusual thing is that
 11 the contract is in English and our lawyer told
 12 us that the contract should have been drafted
 13 in Spanish because it was a contract between
 14 two Spanish companies.
 15 They were also represented by two
 16 foreign individuals and they could take their
 17 positions in their own countries, but in Spain
 18 it was obligatory to abide by the Spanish
 19 legislation.
 20 Mr. Debregeas was acting on behalf
 21 of the Spanish -- the Ethypharm Spain, but he

23 (Pages 237 to 240)